

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20140930**

**Docket: A-291-13**

**Citation: 2014 FCA 217**

**CORAM: NADON J.A.  
WEBB J.A.  
SCOTT J.A.**

**BETWEEN:**

**ANDRITZ HYDRO CANADA INC. AND VA  
TECH HYDRO CANADA INC.**

**Appellants**

**and**

**THE PRESIDENT OF THE CANADA  
BORDER SERVICES AGENCY**

**Respondent**

Heard at Ottawa, Ontario, on September 30, 2014.  
Judgment delivered from the Bench at Ottawa, Ontario, on September 30, 2014.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**NADON J.A.**

Federal Court of Appeal



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**REASONS FOR JUDGMENT OF THE COURT**

(Delivered from the Bench at Ottawa, Ontario, on September 30, 2014).

**NADON J.A.**

[1] Notwithstanding Mr. Kaylor's strong arguments to the contrary, we see no reviewable error on the part of the Canadian International Trade Tribunal (CITT) when it decided that it would not consider the appellants' arguments pertaining to the "incorporated into" component of the "for use in" definition of subsection 2(1) of the *Customs Tariff*, S.C. 1997, c. 36.

[2] In the CITT's opinion there was no basis or justification for the appellants not having raised this issue in their pre-hearing submissions or their supplementary submissions, noting that the appellants had only raised the issue during the course of their final submissions at the end of the hearing which caused the respondent to object on the ground that it would be unfair and prejudicial to it to allow the appellants to make their argument.

[3] In our view, in concluding as they did, it cannot be said that the CITT improperly or arbitrarily exercised its discretion.

[4] For these reasons, the appeal will be dismissed with costs.

“Marc Nadon”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-291-13

**STYLE OF CAUSE:** ANDRITZ HYDRO CANADA  
INC. AND VA TECH HYDRO  
CANADA INC. v. THE  
PRESIDENT OF THE CANADA  
BORDER SERVICES AGENCY

**PLACE OF HEARING:** Ottawa, Ontario

**DATE OF HEARING:** SEPTEMBER 30, 2014

**REASONS FOR JUDGMENT OF THE COURT BY:** NADON J.A.  
WEBB J.A.  
SCOTT J.A.

**DELIVERED FROM THE BENCH BY:** NADON J.A.

**APPEARANCES:**

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**SOLICITORS OF RECORD:**

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